

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:
ZULMA I. RODRÍGUEZ-RIVERA
PEDRO MARÍN-RECHES,
RODRÍGUEZ-RIVERA, et al,
Plaintiff
vs
PUERTO RICO TELEPHONE
COMPANY,
Defendant
CONTESTED MATTER

CASE NO.: 09-06214(ESL)

ADV. NO.: 09-0256

August 3, 2010
Old San Juan, Puerto Rico

ADVERSARY PROCEEDING

HELD BEFORE THE HONORABLE ENRIQUE S. LAMOUTTE
UNITED STATES BANKRUPTCY COURT JUDGE
FEDERAL COURTHOUSE, OLD SAN JUAN, PUERTO RICO

APPEARANCES:

FOR DEBTOR : Otto Landrón, Esq.
FOR PLAINTIFF : Carlos Rodríguez, Esq.

CERTIFIED TRANSCRIBERS INC.

1075 Carr. 2 Cond. Plaza Suchville #302
Bayamon, Puerto Rico 00959
Tel. # (787)783-6623

P R O C E E D I N G S

(11:38 A.M.)

PARTIAL TRANSCRIPT

THE COURT: Thanks. I was just checking to close the matter.

I have reviewed all the documents relative to this Adversary Proceeding requesting... or for Violation of the Automatic Stay against Defendant Puerto Rico Telephone Company, and I don't have any questions.

I have again reviewed the Issue of Notice because the Defendant has not appeared in this case for any matter. As a matter of fact, I don't see any Proof of Claim filed by Puerto Rico Telephone Company.

Although, in the schedules, Puerto Rico Telephone Company is included as an Unsecured Creditor holding for a Claim on two telephone lines, and specifically the ones in question here as to Exhibit 1 and 2 presented by the Debtors.

Again, I reviewed, and there's a Certificate of Service, which is showing that the Complaint was served on Mr. Enrique Montellano, President of Puerto Rico Telephone Company, of

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1 Puerto Rico Telephone Company's failure to respond.

2 Default was entered, and Judgement...
3 Partial Judgement has been entered finding Puerto
4 Rico Telephone Company liable by default.

5 And, as I said, I have reviewed the
6 Bankruptcy Petition and Schedules, and it appears
7 that Puerto Rico Telephone Company was, indeed,
8 included and given notice of the Petition.

9 The Complaint for Violation of the
10 Automatic Stay was filed on December 18, 2009. It
11 stands unopposed, so the allegations in the same are
12 deemed admitted, and particularly paragraph three:

13 "The Defendant, Puerto Rico Telephone
14 Company, was named in Schedule F of the
15 Petition as a Creditor with a security of
16 priority. The Defendant is a Creditor of the
17 Debtors by virtue of a lease of a residential
18 telephone line number (787)790-0496."

19 I have corroborated the Schedules, and
20 that is a fact, in addition to it being uncontested
21 by Defendant. It appears from the record that an
22 Order for Relief was entered on July 30, 2009,
23 pursuant to the Chapter 7 Petition filed by the
24 Debtors.

25 The testimony of Ms. Zulma Rodríguez

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1 corroborates the allegations in paragraph five,
2 that:

3 "On two occasions during the month of May,
4 2009, prior to filing the Bankruptcy Petition,
5 Debtors requested PRTC to disconnect the line.

6 During the month of May, Debtors installed
7 another telephone line with another telephone
8 company, and have not been able to use the PRTC
9 line since.

10 Debtors assumed that the line was
11 disconnected. That, in spite of having been
12 notified by the Court of the filing of the case
13 and the effect upon Creditors, PRTC continued
14 sending monthly billing statements on August
15 19th, September 19th, October 19th, and letters
16 collecting the debt, copies of which are
17 attached as Exhibits A, B and C."

18 So, what appears as Exhibit 1 in this
19 case was attached to the Complaint, which was served
20 on the Defendant, Puerto Rico Telephone Company. So,
21 the Defendant was appraised of the allegations and
22 the supporting documents at the time that the
23 Complaint was filed.

24 "On September 18, 2009, the Defendant, by
25 its agents and employees from the *Departamento*

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1 *de Tratamiento y Cobros*, sent a letter to the
2 Debtor at her home address.". That appears also
3 in Exhibit 1.

4 "On October 1, 2009, the undersigned
5 Counsel for the Debtor sent a first class
6 letter to the Defendant informing it of the
7 filing of the Petition and describing the
8 provisions of Section 362(a)."

9 A copy of that letter is attached here
10 to Exhibit E. So, the letter by Counsel was attached
11 to the Complaint, served on the Puerto Rico
12 Telephone Company. That letter has also been
13 introduced in evidence as Exhibit 2 in these... at
14 this hearing.

15 "That at no time did any agent or employee
16 of the Defendant communicate or attempt to
17 communicate with the Debtors' undersigned
18 Counsel or knew or had reason to know that the
19 Debtors were represented by him."

20 So, those are the allegations on the
21 Complaint. They're uncontested, and they are
22 corroborated by the record and the testimony of Ms.
23 Zulma Rodríguez, who, in addition, has stated that
24 she suffers from a life-threatening illness that has
25 consumed Pre-Petition and currently all income.

1 That the basic reason for filing the
2 Bankruptcy Petition was because they did not...
3 since they were spending all the money in treating
4 her condition, she needed peace and had to avoid
5 stress.

6 The Puerto Rico Telephone Company tried
7 to collect the debt every month. That's in the
8 exhibits submitted. She felt stressed, sad and
9 impotent, and called her Attorney upon receiving the
10 first collection letter.

11 The Attorney indicated that she should
12 wait to see if there is a second attempt before
13 doing anything. The second attempt came, and, as a
14 result thereof, the Attorney wrote the Puerto Rico
15 Telephone Company to cease collection efforts.
16 That's Exhibit 2.

17 The collection efforts continued. Ms.
18 Rodríguez feels that her recuperation is impossible
19 on account of the stress. And, that, subsequently,
20 she received a call from a collection agency
21 attempting to collect the debt.

22 I have reviewed the Claim Register, and
23 Puerto Rico Telephone Company has not filed a Claim,
24 although they were included as a Creditor.

25 I have reviewed separate statements

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1 filed in Exhibit 1. I think they're inconsistent in
2 the way they apply payments and the way they
3 indicate arrears. So, that's the fact on scenario
4 leading.

5 Now, as to how much in damages should
6 be awarded, as I understand upon closing, the
7 Debtors are requesting one thousand dollars for each
8 violation. For eleven violations, that would be
9 eleven thousand dollars.

10 They're also requesting an additional
11 fifty thousand dollars for punitive damages and
12 attorneys' fees in the amounts to be requested as
13 per honorification (phonetic) to be filed.

14 MR. RODRÍGUEZ: And, an additional
15 fifty thousand dollars for Contempt of Court
16 remedies.

17 THE COURT: And, why different from
18 punitive?

19 MR. RODRÍGUEZ: They are now being
20 allowed and added on to the remedies for the
21 Debtors, who are victims of the Violation of the
22 Automatic Stay. And, in our... excuse me... in our
23 Application for Partial Judgement of Default, we
24 explained it as a matter of law. If it pleases the
25 Court, I would go ahead and read it.

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1 "In addition to remedies under Section
2 362(k), the Debtor also has remedies for
3 Violation of the Automatic Stay as Contempt of
4 Court Order.

5 It is quite clear that the Violation of the
6 Stay constitutes Contempt of Court....".... no,
7 excuse me, I'm sorry, we're in the Contempt of
8 Court (phonetic). I apologize.

9 That would be in the case of Jovet
10 Engineers, Inc. versus Internal Revenue Service, 92
11 Federal 3rd, 1539, 11th Circuit. In 1996, that
12 decision was handed down. Also it states here:

13 "The legislative history, in Section
14 362(k), makes clear that Congress was granting
15 an additional remedy to Debtors beyond those
16 already in existence."

17 And, that would be 130 Congress Record
18 Hearing, 1942. It's also stated in Inre: Skinner,
19 917 Federal 2nd, 444 of the 10th Circuit, a 1990
20 decision. Those would be the arguments in law for
21 asking damages in terms of Contempt of Court.

22 THE COURT: You mentioned eleven
23 instances of collection. I have ten documents.

24 MR. RODRÍGUEZ: And, the phone call.

25 THE COURT: Oh, and the phone call.

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1 MR. RODRÍGUEZ: That's after having
2 referred the account to a collection agency. They're
3 the last two communications.

4 THE COURT: Damages are assessed as
5 follows. One thousand dollars for each violation,
6 for eleven thousand dollars, three times that amount
7 as punitive damages. That's thirty-three thousand
8 dollars, plus attorneys' fees to be filed with the
9 Court within ten days. And, the Court requests a
10 transcript of this Court's Findings and Conclusions.

11 MR. RODRÍGUEZ: Permission to be
12 excused, sir.

13 THE COURT: You're excused.

14 MR. RODRÍGUEZ: Thank you. Have a
15 good day.

16 THE COURT: Court recesses till two
17 o'clock.

18 (11:51 A.M.)

19 (Whereupon, the hearing in the above-
20 entitled matter was terminated.)
21
22
23
24
25

TRANSCRIBER CERTIFICATION

I, CRYSTAL INCHAUSTEGUI BREAZ, Transcriber,
do hereby certify that the foregoing transcript was
transcribed by me to the best of my abilities.

I CERTIFY that all "(inaudible)" were
carefully reviewed and found to be as written.

I FURTHER CERTIFY that I am not interested
in the outcome of the case mentioned in said
caption.

WITNESS MY HAND this 20 day of the month of
August, 2010 in San Juan, Puerto Rico.

S/ CRYSTAL INCHAUSTEGUI

CRYSTAL INCHAUSTEGUI BREAZ

I, DIANE BREAZ, RPR and Official Court Reporter for
the District Court of Puerto Rico, certify that the
foregoing transcript has been verified and certified
by me.

S/ DIANE BREAZ

DIANE BREAZ

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